

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 14, 2003**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on March 14, 2003. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Member Ricky Wright and Commission Member Mike Joyner.

MINUTES OF FEBRUARY 7, 2003 MEETING

The Chairman asked Commission Member Ricky Wright and Commissioner Mike Joyner if they had any corrections or additions regarding the Commission minutes from the February 7, 2003, meeting. Commissioner Wright and Commissioner Joyner had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Wright and Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he recused himself from case #58, Tailgaters Sports Bar, and Commissioner Joyner stated that he found no conflict. The Chairman stated she found no conflicts of interest with regard to herself.

I. HEARING CASES – 122 listed.

Chief Deputy Counsel Fred Gregory stated that the permittee for contested case #1, Raleigh Live, was not present and he had not heard from the permittee. The Chairman asked what were the underlying violations. Mr. Gregory stated that there were two violations, one was sale to an underage person and the other was open to the public. Mr. Gregory stated that an offer in compromise was sent to the permittee for 12 days suspension or \$1,200.00. The Chairman asked if the permittee had agreed to compromise. Mr. Gregory stated that he didn't know because he never received a signed offer back. The Chairman asked Mr. Gregory what was his recommendation. Mr. Gregory stated that penalty could be 15 days suspension with the last 5 days suspended upon payment of \$750.00. The Chairman made a motion to adopt the findings of facts and conclusions of law of Judge Beryl Wade and that the commission impose a penalty of 15 days suspension with the last 5 days suspended upon payment

of \$750.00. Mr. Gregory asked the Chairman if the Commission wanted to tentatively accept an offer from the permittee up until the day of the suspension. The Chairman stated that if there were extenuating circumstances that had kept the permittee from calling or being here today, then she didn't have a problem with that. The Chairman asked the Commission Members if they would authorize her to determine if the circumstances were justified. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Mr. Bobby Mooneyham, employee of case #34, Capital Food Shop, was present to speak on behalf of the case. Mr. Mooneyham stated that he was working that night and that he had observed the underage person enter the store and then five young boys had come into the store and scattered out. There were two police officers there; one was outside of the store. The Chairman asked Mr. Mooneyham if he was aware that they were in the store. Mr. Mooneyham said that he did and that was why he was trying to watch all of them, plus do his job. He further stated that the officer came into the store and made the boys line up and empty their pockets. One of the boys had candy in his pocket and another one had a bottle of wine. The officer told the boys that if he caught them in the store again, he would take them to juvenile hall and made them leave the store and told them to never come back again. The officer then told Mr. Mooneyham that if they came back into store, to call him and he would take care of it. Mr. Mooneyham stated that he had been checking ID's for cigarettes all day long and the underage girl had just turned 18 years old and that was how he had gotten it confused. He went before the judge and he had dropped everything. Mr. Mooneyham further stated that he had never had this problem before and that he had been there for about 15 years. Commissioner Joyner made a motion to reduce the penalty from \$1,000.00 to \$500.00. Seconded by Commissioner Wright. So Ordered.

Commissioner Wright had a question about case #99; Martin Street Mini Mart. Commissioner Wright asked what was the penalty for the charge against the permittee, which was refusal to permit ALE to enter an area to inspect. Commissioner Wright stated that he thought the penalty for a violation like this should be more severe. Assistant Counsel Clayton Somers was the attorney for this case and he stated that the employee did not have a key (for the alcohol storage area) and the permittee had been warned before that they needed to have a key on the premises. The permittee had been called and he brought a key to the store. He further stated that he thought that it was a matter of trust between the permittee and the employees. The Chairman and the Commission Members stated that they understand and agreed with the penalty.

The Chairman had comments about the following cases:

#73 - Ponderosa B P - The Chairman stated that although the offer did not reflect a prior violation, there was one, which justified the \$2,000.00 penalty shown on the offer. Assistant Counsel LoRita Pinnix stated that the permittee was sent a corrected offer in compromise (reflecting the prior violation), but the permittee failed to send that one back to the commission, instead he sent back the incorrect offer.

#109 – Trade Mart 40 – The Chairman asked Assistant Counsel Clayton Somers if the penalty was correct. Mr. Somers verified that the penalty was \$750.00 and not \$250.00.

#116 – Smitty's 903 – The Chairman asked what type of gambling was going on. After reviewing the violation again, Ms. Pinnix stated that she couldn't tell what type of gambling had occurred from the report. The Chairman made a motion to decline to take action of revocation of the permit. The Chairman asked that Ms. Pinnix get back with the permittee and see if he was willing to settle this without revocation of his permit. Seconded by Commissioner Wright. So Ordered.

Assistant Counsel LoRita Pinnix stated that case #78 – Showbiz Pizza Place, was actually a first time offense and could be lowered. The Chairman made a motion to lower the penalty from \$2,000.00 to \$500.00.

Assistant Counsel Tim Morse requested that contested case E&J Millennium, be continued to the May Commission because the agendas for the March Commission and April Commission meetings are full. The Chairman made a motion that the E&J Millennium case be continued until the May Commission meeting. Seconded by Commissioner Joyner. So Ordered.

The following cases are to be carried over to the April Commission meeting:

- #2 – Lincoln House
- #4 – C Mart 4
- #69 – Crown NC 752
- #82 – Ballards Crossroads Grill
- #112 – Stockyard Restaurant
- #114 – Crown NC 053
- #116 – Smitty's 903

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to accept all other offers in compromise with the exception of #1, #2, #4, #34, #69, #78, #82, #112, #114 and #116, which had either been ratified earlier or continued. (Mr. Wright's vote does not include case #78, Tailgater's Sports Bar, from which he has recused himself). Seconded by Commissioner Wright. So Ordered.

- II. ABC Store Location – Asheville ABC Board - ABC Administrator Michael Herring presented information regarding Asheville ABC Board requesting approval to relocate their store #8, which is at 6 Long Shoals Village in Skyland, North Carolina to 11 Miller Road in Skyland, North Carolina. The reason for the relocation is because the Department of Transportation is doing a widening of the road and they will lose parking spaces at the current location. The proposed property is currently a .4-acre vacant lot and is zoned for commercial business. Eddie Sasser and Harvey Sasser own the proposed location property and there

is no known conflict of interest regarding their ownership and any board member. The nearest church is located .8 of a mile and the nearest school is .6 of a mile from the proposed location. Pursuant to ABC Commission Regulations, the 30 day Notice of Intent to open an ABC store was posted and will be met on March 19, 2003. To date no objections have been received to the proposed site. The Asheville ABC Board requested approval today because they have a closing date on the property later this month and don't want to continue it to next month's Commission. Mr. Herring recommended that the Commission approve their request contingent upon the expiration of the 30 day Notice of Intent. The Chairman made a motion to approve the store relocation only on the basis that no objections are received through March 19, 2003. Seconded by Commissioner Joyner. So Ordered.

III. OTHER BUSINESS

Administrator Michael Herring stated that he had a request for exemption from Kay Billings with the Lexington ABC Board. She requested a exemption from G.S. 18B-201, which is the conflict of interest statute, so that her son Anthony Billings can pursue a position as a salesman with Hannah and Dunn, a brokerage firm in the North Carolina Distiller Industry. He would be working in the western part on the state if the Commission grants the exemption. Mr. Herring stated that Kay Billings is the general manager of the Lexington ABC Board and in her letter to the Commission she said that she has always been fair in setting high standards for their system, and that she would not give preferential treatment to Hannah & Dunn or to her son. She also stated that she was willing to delegate to her assistant all responsibilities which pertain to Hannah and Dunn products in their stores. Mr. Herring stated that he contacted each of the other brokers in confidence and inquired if they had any problems with the Commission granting the exemption so that her son could pursue this opportunity. He stated that the each of the brokers said that they had no problem with the exemption. Mr. Herring recommended that the Commission grant the exemption. The Chairman made a motion to grant the exemption. Seconded by Commissioner Joyner. So Ordered.

ABC Administrator Michael Herring stated that there were some out of town guests present to hear the Commission's vote on the request that had been on last month's agenda regarding the modification of the guidelines that the Commission adopted last September, "Solicitation of Mixed Beverages Permittees by Distiller Representatives." Mr. Herring presented the Commission with some recommended modifications to the guidelines, which read as follows:

C.4 Provide to the mixed beverage permittee the following:

- a. a. Point-of-Sale advertising materials that bear conspicuous and substantial brand logo advertising matter designed to attract consumer attention to the products of the industry members. Such materials*

include, but are not limited to posters, place cards, table tents and advertising signs that have no secondary value other than as advertising. Point-of-sale advertising materials may not be customized for a retailer with the retailer's name or logo.

- b. b. Retailer Advertising Specialty Items that bear conspicuous and substantial brand logo advertising matter. Such materials include, but not limited to:*

Trays, coasters, mats, paper napkins, back bar mats, rail mats, shakers, stirrers, bar caddies, back bar pedestals, and display stands or cases.

Retailer Advertising Specialty items may not be customized for an individual mixed beverages permittee and may not exceed \$50.00 per brand at any one time in any one retail establishment. Retailer Advertising Specialty Items do not include Product Displays such as shelving, glassware, cups, dispensing containers or equipment or Consumer Specialty Items or Novelties, as those terms are defined in the Commission's Rules at 4 NCAC 2S .1012, 2T .0713(a)(1) and (b)(5).

Photos or drawings of all Retailer Specialty Items shall be submitted electronically to the administrator for review and approval prior to distribution in the market.

- c. c. Drink menus, table tents and beverage lists, provided they are not printed with the mixed beverages permittee's food menu.*

An Industry member may not directly or indirectly pay or credit the mixed beverages permittee for using or distributing these materials or for any expense incidental to their use.

Mr. Herring stated that Vice President Dave Holliday and Vice President Steve Bellini, of the Distilled Spirits Council of the United States were present for the meeting. Mr. Holliday stated that he wanted to thank the Commission and Michael Herring for being willing to sit down with them and consider changes and modifications to some of the trade practice rules and regulations that have been governing North Carolina for quite some time. The Chairman asked Mr. Herring if he had any feedback from the brokers. Mr. Herring stated that he had and they seem positive and recommended that the Commission approve it. The Chairman made a motion to incorporate these changes in to the guidelines that are already in place and make it effective April 1, 2003. Seconded by Commissioner Joyner. So Ordered.

The Chairman stated that she had an issue to bring before the Commission. She stated that she received a letter dated March 13, 2003 from the North Carolina

Board of Ethics, regarding Commissioner Thomas R. Wright, Jr.'s., Statement of Economic Interest filed on February 25, 2003. The ethics board found that Commissioner Wright had no actual conflict of interest, but they did find a potential for conflict of interest. Commissioner Wright is affiliated with several businesses and individuals who have financial interests in certain retail businesses. The Board of Ethics also had asked Commissioner Wright about his connection, if any, with the possibility of a fuel alcohol (ethanol) facility in North Carolina. Commissioner Wright addressed the issue via letter to the Board of Ethics and stated that he had no economic or contractual interest in such facility, but agreed to promptly notify the board and the Commission should he decide to pursue the same in the future. It was noted by the Chairman that Mr. Wright has in fact recused himself on several occasions to avoid the appearance of any conflicts.

CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys and for the purpose of discussing a pending case involving Renwood Winery and London Wineman.

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**CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF
Minutes**

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys and for the purpose of discussing a pending case involving Renwood Winery and London Wineman.

Amy Yonowitz, Assistant Attorney with the Attorney General's Office, stated that with regard to the Renwood Winery case, Assistant Counsel Tim Morse was appointed hearing officer, therefore is acting like the Administrative Law Judge and now they are going to the Chairman and asking for her to make rulings in this case. Mrs. Yonowitz stated that in her opinion neither the Chairman nor the Commissioners should be involved in the case until it comes before the Commission. Ms. Yonowitz agreed.

END OF CLOSED SESSION

III. OTHER BUSINESS

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Wright. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division